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February 20, 2015

VIA HAND DELIVERY

Hon. Alvin K. Hellerstein
United States District Judge
United States Courthouse
500 Pearl Street
New York, NY 10007

Re: Vera v. BBVA, et al.
12 Civ. 1596 (AKH)

Dear Judge Hellerstein:

I represent Banco Bilbao Vizcaya Argentaria S.A. (“BBVA”). I write in response to the letter, dated February 6, 2014, submitted to the Court by Mr. Swift, counsel to Aldo Vera, Jr., Docket No. 734.

The Court has before it BBVA’s motion (i) pursuant to Local Rule 6.3, for reconsideration of the Court’s discovery order, and (ii) for § 1292(b) certification. Docket No. 694. BBVA did indeed file a notice of appeal from this Court’s discovery order, dated September 10, 2014. Docket No. 677. BBVA did so in order to comply with the 30-day, jurisdictional deadline imposed by Rule 4(a)(1)(A), FRAP. The case law states that a motion under Rule 6.3 “is not one of those that, under FRAP Rule 4(a)(4)(A), postpones the deadline for appeal.” Lichtenberg v. Besicorp Grp. Inc., 204 F.3d 397, 403-04 (2d Cir. 2000). The Second Circuit later refused to stay the appeal pending a decision by Your Honor. See the e-mail attached to this letter. Therefore, the parties proceeded to file briefs in the Court of Appeals.

Vera contends that this Court has quasi in rem jurisdiction. This contention, however, is meritless, as shown at pages 22-26 of BBVA’s Reply Brief, filed today in the Court of Appeals, which I incorporate by reference.

Finally, Vera seeks to distinguish Gucci Am., Inc. v. Bank of China, 738 F.3d 122 (2d Cir. 2014), on the ground that Gucci involved pre-judgment discovery, not post-judgment discovery. Gucci, however, applies restrictions imposed by the Due Process Clause, which apply to discovery at all stages of a case, including post-judgment discovery. The cases cited by Vera,

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EM Ltd. v. Rep. of Argentina, 695 F.3d 201 (2d Cir. 2012) and First City, Texas-Houston, N.A. v. Rafidain Bank, 281 F.3d 48 (2d Cir. 2012), must be read in light of Daimler AG v. Bauman, 134 S. Ct. 746 (2014) and Gucci. I respectfully direct the Court's attention to pages 19-20 of our Reply Brief.

BBVA, like Vera, would be pleased to provide any additional briefing or oral argument that the Court may wish to have.

Respectfully submitted,



Kenneth A. Caruso

KAC:kk

cc: All Counsel (via e-mail)